

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

HUMBERTO FEIJOO,
Plaintiff,

v.

Civil Action No. 13-11432-PBS

MASSACHUSETTS DEPARTMENT
OF CORRECTIONS, ET AL.,
Defendants.

PROCEDURAL ORDER
March 4, 2015

SARIS, C.J.

Plaintiff Humberto Feijoo, initially proceeding pro se, filed this civil rights action under 42 U.S.C. § 1983 against the Massachusetts Department of Correction and others. See Docket No. 1. Plaintiff has been represented by pro bono counsel since October 2013, and last month Magistrate Judge Dein allowed the parties' joint motion to continue mediation proceedings to May 13, 2015. See Docket No. 44.

On February 27, 2015, the defendants filed a Suggestion of Death notifying the Court that Mr. Feijoo had died on February 23, 2015. See Docket No. 45. The certificate of service accompanying the Suggestion of Death of Plaintiff Humberto Feijoo states that on February 27, 2015, copies were electronically served on plaintiff's counsel of record. Id.

Mr. Feijoo's death affects the viability of this lawsuit. Pursuant to Federal Rule of Civil Procedure 25(a), "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party." If a motion for substitution

of the party is not made within 90 days after service of a statement noting the death, "the action by ... the decedent must be dismissed." Fed. R. Civ. P. 25(a)(1). This 90 day time period does not begin to run until the decedent's representative or successor is properly served with the statement noting the death thereby identifying and notifying the substitutable party. In re C.R. Stone Concrete Contractors, Inc., 462 B.R. 6, 18 (Bankr. D. Mass. 2011).

Accordingly, if a timely motion for substitution is not filed with the Court, this action may be dismissed pursuant to Rule 25 of the Federal Rules of Civil Procedure.

SO ORDERED.

/s/ Patti B. Saris
PATTI B. SARIS
Chief, U.S. DISTRICT JUDGE